

Ahilan T. Arulanantham (SBN 237841)
arulanantham@law.ucla.edu
Stephany Martinez Tiffer (SBN 341254)
martineztiffer@law.ucla.edu
CENTER FOR IMMIGRATION LAW AND
POLICY, UCLA SCHOOL OF LAW
385 Charles E. Young Dr. East
Los Angeles, CA 90095
Telephone: (310) 825-1029

Emilou MacLean (SBN 319071)
emaclean@aclunc.org
Michelle (Minju) Y. Cho (SBN 321939)
mcho@aclunc.org
ACLU FOUNDATION
OF NORTHERN CALIFORNIA
39 Drumm Street
San Francisco, CA 94111-4805
Telephone: (415) 621-2493
Facsimile: (415) 863-7832

Attorneys for Plaintiffs
[Additional Counsel Listed on Next Page]

UNITED STATES DISTRICT COURT
NORTHERN DISTRICT OF CALIFORNIA
SAN FRANCISCO DIVISION

NATIONAL TPS ALLIANCE, MARIELA GONZÁLEZ, FREDDY JOSE ARAPE RIVAS, M.H., CECILIA DANIELA GONZALEZ HERRERA, ALBA CECILIA PURICA HERNÁNDEZ, E.R., and HENDRINA VIVAS CASTILLO

Plaintiffs,

v.
KRISTI NOEM, in her official capacity as
Secretary of Homeland Security, UNITED
STATES DEPARTMENT OF HOMELAND
SECURITY, and UNITED STATES OF
AMERICA

Defendants.

Case No. 25-cv-1766

**EXPERT DECLARATION OF STACY
TOLCHIN IN SUPPORT OF
PLAINTIFFS' MOTION TO POSTPONE
EFFECTIVE DATE OF AGENCY
ACTION**

1 Additional Counsel for Plaintiffs
2 Jessica Karp Bansal (SBN 277347)
3 jessica@ndlon.org
4 Lauren Michel Wilfong (pro hac vice pending*)
5 lwilfong@ndlon.org
NATIONAL DAY LABORER ORGANIZING NETWORK
6 1030 S. Arroyo Parkway, Suite 106
Pasadena, CA 91105
Telephone: (626) 214-5689
7 Eva L. Bitran (SBN 302081)
8 ebitran@aclusocal.org
ACLU FOUNDATION
9 OF SOUTHERN CALIFORNIA
10 1313 West 8th Street
Los Angeles, CA 90017
Telephone: (213) 977-5236
11
12
13
14
15
16
17
18
19
20
21
22
23
24
25
26
27
28

EXPERT DECLARATION OF STACY TOLCHIN

1. I, Stacy Tolchin, am an attorney licensed to practice by the State of California. If called to testify, I could and would do so as follows:

2. I have been asked to provide an expert opinion to explain some of the law governing what protections TPS has afforded to the Venezuelan immigrant communities at issue in this case, and how those protections do and do not overlap with the rights Venezuelan TPS holders may have under other immigration laws. I make this declaration based on my personal and professional knowledge, my skill, experience, training, and education, and facts and data regularly relied upon in my field that are currently available to me. If additional information becomes available, or if I believe it would be appropriate to respond to any critique or contrary theories, I will advise Plaintiffs' counsel that I intend to do so and will seek their help in following the appropriate judicial procedures. The opinions in this declaration are my own.

Qualifications

3. I received my Juris Doctorate from the University of California at Los Angeles in 2001, and have been practicing law for over 23 years.

4. I am admitted to practice before the United States Supreme Court; the United States Court of Appeals for the Ninth, Tenth, Fifth, and Second Circuits; and the United States District Court for the Northern District of California, Eastern District of California, Central District of California, Southern District of California, Court of Federal Claims, and District of New Mexico.

5. My business address is Law Offices of Stacy Tolchin, 776 E. Green St. Suite 210, Pasadena, CA 91101. I practice throughout the state of California.

6. I am a recipient of the American Immigration Lawyers' Association Southern California Chapter 2019 Annual Pro Bono Award, the University of California at Los Angeles Law School's 2018 Alumni Public Service Award, the National Lawyers Guild of Southern California 2017 annual award, the American Immigration Lawyers Association's 2009 Jack Wasserman Award for Excellence in Immigration Litigation, the 2009 American Civil Liberties Union of Southern California Equal Justice Advocacy Award, the 2008 National Immigration Law Center Annual Award, the 2007 "Unsung Hero" Award for the National Lawyers Guild of the Bay Area, and was recognized in 2003

1 by the Arab-American Anti-Discrimination Committee of San Francisco. I was also named to “Super
 2 Lawyers” from 2012-2024.

3 7. I am a former member of the Board of Directors of the National Immigration Project
 4 for the National Lawyers Guild, a member of the National Lawyers Guild, the Los Angeles County
 5 Bar Association immigration section, and the American Immigration Lawyers Association.

6 8. I specialize in immigration-related litigation before the federal courts. Cases I have
 7 litigated include: *Alvarado-Herrera v. Garland*, 993 F.3d 1187 (9th Cir. 2021) (establishing the legal
 8 standard for the “reasonable fear” screening test before an immigration judge); *Arce v. United States*,
 9 899 F.3d. 796 (9th Cir. 2018) (establishing that the federal courts have authority to consider damages
 10 actions under the Federal Tort Claims Act in cases involving unlawful deportations); *Bonilla v. Lynch*,
 11 840 F.3d 575 (9th Cir. 2016) (establishing federal court jurisdiction to review motions to sua sponte
 12 reopen based on changes in law); *Mendiola v. Holder*, 576 F. App'x 828 (10th Cir. 2014) (petition for
 13 review in Tenth Circuit challenging removal of a lawful permanent resident based on change in law);
 14 *Bains v. Holder*, 584 F. App'x 574 (9th Cir. 2014) (petition for review challenging removal order based
 15 on changed circumstances arising in India); *Duran Gonzales v. U.S. Dep't of Homeland Sec.*, 712 F.3d
 16 1271 (9th Cir. 2013) (class action litigation involving applications for lawful permanent residency
 17 where the applicants had been previously deported); *Huerta v. Holder*, 484 F. App'x 172 (9th Cir.
 18 2012) (petition for review based on ineffective assistance of counsel); *Padilla-Padilla v. Gonzales*,
 19 463 F.3d 972 (9th Cir. 2006) (challenge to Board of Immigration Appeals’ failure to follow its internal
 20 regulations); *Silaya v. Mukasey*, 524 F.3d 1066 (9th Cir. 2008) (finding that victim of gang-rape in the
 21 Philippines had suffered past persecution based on her father’s political opinion); *Husyev v. Mukasey*,
 22 528 F.3d 1172 (9th Cir. 2008) (finding that courts have jurisdiction to review agency’s failure to follow
 23 asylum regulations); *Hassine v. Johnson*, 2014 WL 5035173 (E.D. Cal. 2014) (petition for de novo
 24 naturalization case and award of attorneys’ fees); *Zavala v. Ridge*, 310 F. Supp. 2d 1071 (N.D. Cal.
 25 2004) (Department of Homeland Security’s “automatic stay” regulation that keeps non-citizens in
 26 custody while their immigration cases are pending, even after an immigration judge has ordered their
 27 release, is facially unconstitutional); *Singh v. Still*, 470 F. Supp. 2d 1064 (N.D. Cal. 2007) (successful
 28 petition for writ of mandamus challenging Department of Homeland Security’s unreasonable delay in

1 the adjudication of applications for permanent residency); *Shahwan v. Chertoff*, C 05 4218 MMC
 2 (N.D. Cal. 2005) (granting petition for writ of habeas corpus where petitioner was not informed when
 3 he traveled on “advance parole” that he would be ineligible for a bond hearing before an immigration
 4 judge); and *Araujo v. INS*, 301 F. Supp. 2d 1095 (N.D. Cal. 2004) (Federal Tort Claims Act action
 5 finding that the United States government was liable for damages to a non-citizen for unlawful
 6 deportation).

7. I have deep expertise and extensive practice experience in immigration law, including
 8 in the law governing the Temporary Protected Status (TPS) statute, 8 U.S.C. 1254a, and its interaction
 9 with various other provisions of the immigration law, including the law governing asylum, detention,
 10 and other related areas of immigration law. I have represented many individuals who had (or had
 11 previously held) TPS in removal proceedings. I also successfully represented a class of TPS holders
 12 who challenged policies related to their eligibility to adjust status after having traveled on authorized
 13 TPS travel in *Gomez v. Jaddou*, Case 1:21-cv-09203-ALC (S.D.N.Y), which resulted in a change in
 14 USCIS policy that recognized TPS recipients who returned to the United States with authorized travel
 15 were “admitted.”

16 Overview

17. Until the decisions challenged in this case, Temporary Protected Status was available,
 18 broadly speaking, to Venezuelan nationals who had resided here continuously since on or before July
 19 31, 2023, unless they had a felony or two or more misdemeanor convictions. On January 17, 2025,
 20 DHS Secretary Mayorkas extended Venezuelan TPS until October 2, 2026. DHS Secretary Noem’s
 21 order vacating that decision was issued February 3, 2025. I understand that that vacatur order and the
 22 termination decision that followed it are the subject of this lawsuit.

23. As I explain herein, although many Venezuelan TPS holders may also be eligible for
 24 protection from removal and work authorization through other avenues, only a small minority will
 25 actually receive relief, and it is very likely that many Venezuelan TPS holders would *not* be protected
 26 to the same degree by any other statute. In fact, many of them would not be protected at all from loss
 27 of employment and removal were they to lose TPS.

1 **Protections Under the TPS Statute**

2 12. The TPS statute provides a very clear form of immigration status, and robust protection
 3 to live and work in the United States, to people who hold TPS. Congress has explicitly forbidden the
 4 removal of anyone who has TPS. Subsection (a)(1)(A) of the statute provides that the federal
 5 immigration enforcement authorities “shall not remove the alien from the United States during the
 6 period in which such status is in effect.”

7 13. Congress has also mandated that TPS holders receive employment authorization.
 8 Subsection (a)(1)(B) of the statute provides that federal immigration authorities “shall authorize the
 9 alien to engage in employment in the United States and provide the alien with . . . [a] work permit.”

10 14. Furthermore, although in general the federal government has broad powers to detain
 11 (that is, to jail) non-citizens charged with being deportable under the immigration laws, Congress has
 12 expressly forbidden the detention of people who have TPS. Subsection (d)(4) of the TPS statute
 13 provides “An alien provided temporary protected status under this section shall not be detained by
 14 the Attorney General on the basis of the alien’s immigration status in the United States.”

15 15. The TPS statute makes these protections broadly available to people who meet the primary eligibility criteria—which are that one has to be a Venezuelan national who has continuously resided in the United States since on or before July 31, 2023. For someone who meets those criteria, the statute provides the robust protection from detention and deportation and access to work authorization described above, so long as the individual does not have a felony or two (or more) misdemeanor convictions, and has not engaged in certain other highly unusual conduct (concerning the persecution of others and other rare circumstances).

22 **Asylum and Parole, and Other Forms of Protection**

23 16. Many Venezuelans who currently have TPS could be eligible for asylum and related protections under 8 U.S.C. 1158, but that is not true for all of them, and the asylum statute’s protections are weaker than those under TPS for several reasons. Further, only a minority of Venezuelan asylum applications are approved. Applicants whose asylum applications are not approved are automatically placed in removal proceedings.

1 17. To establish eligibility for asylum, an applicant must show a “well-founded fear” of
2 “persecution” “on account of” one of five distinct grounds: “race, religion, nationality, membership in
3 a particular social group, or political opinion.” Each of these is a term of art with technical legal
4 meaning that restricts the availability of asylum in different ways. For example, a Venezuelan who
5 leaves because their children have become malnourished as the grocery stores in their area no longer
6 sell basic goods (or because they cannot afford to buy them) likely cannot establish persecution on
7 account of a protected ground. Even those who flee extortion and violence by organized criminal
8 entities typically cannot establish eligibility for asylum because they cannot show that the harm is on
9 account of a protected ground and for other reasons.

10 18. In addition, because asylum is so legally complex, many applicants hesitate to apply
11 without legal assistance, but of course legal representation is expensive, and if they fail to apply within
12 one year of their arrival, or generally six months after falling out of any non-immigrant status, they
13 are presumptively ineligible for asylum. 8 U.S.C. 1158(a)(2)(B).

14 19. Even if someone has affirmatively applied for asylum, that alone does not guarantee
15 protection from removal or even work authorization. The government takes the position that it can
16 detain and begin removal proceedings against someone with a pending application, so long as the
17 application has not been granted (and they have no other valid legal status). Work permits are available
18 no earlier than six months after someone files for asylum, and the agency is not legally required to
19 provide them. 8 U.S.C. 1158(d)(2).

20 20. Some Venezuelan TPS holders also may have received a form of status through parole
21 under 8 U.S.C. 1182(d)(5)(A)—either through a program that allowed them to fly directly to the
22 United States provided that they had a sponsor and completed a vetting process, or through a program
23 that allowed them to present themselves at a port of entry on the southern border. Those programs
24 typically provided a right to reside in the U.S. for one or two years and work authorization during that
25 period. However, those parole grants were not extended under the prior administration, and the
26 programs authorizing them have been frozen by the new administration (since January 20, 2025), and
27 may well be rescinded. As a result, the numbers of people protected by them will likely shrink in the
28

1 near future (even if the government does not retroactively strip beneficiaries of their rights under
2 them).

3 21. It is of course possible that any given Venezuelan TPS holder may have some other
4 pathway to lawful status, such as through marriage, sponsorship by their employer, or other methods.
5 For example, Venezuelan TPS holders are eligible to change status to other non-immigrant statuses,
6 such as H-1B, a non-immigrant status for foreign professionals, provided they meet the eligibility
7 requirements for the other non-immigrant statuses. But these pathways to lawful status are rare for
8 individuals who arrived in the last several years. Further, if a TPS holder's TPS ends and they fall out
9 of lawful status, then they will not be eligible to change status to a different non-immigrant status.

10 22. Moreover, under a recent change enacted by the Trump Administration, the government
11 takes the view that virtually anyone found anywhere in the United States who fails to show an
12 immigration officer that they have been present for two years or more can be summarily deported,
13 without even being brought before an Immigration Judge, unless they affirmatively assert their right
14 to seek asylum. That such an individual may be married to a U.S. citizen, have an employer willing to
15 sponsor them, or have some other defense to removal would be legally irrelevant in such situations.

16 23. To summarize, notwithstanding the availability of asylum, parole, and other forms of
17 relief under the immigration laws, many thousands of Venezuelan TPS holders—likely the vast
18 majority—will lose their lawful immigration status and work authorization if the TPS vacatur and
19 termination at issue in this case go into effect. That legal change will immediately render them
20 potentially subject to arrest and detention under the immigration laws. Those who cannot prove two
21 years or more of presence could face immediate deportation, while others could remain jailed until
22 presented to an Immigration Judge, before whom they would have to attempt to establish eligibility
23 for asylum under the narrow criteria described above.

1 I declare under penalty of perjury under the laws of the United States of America that the
2 foregoing is true and correct to the best of my knowledge.

3
4 Executed this 20th day of February, 2025, in Pasadena, California.

5
6 
7
8
9

Stacy Tolchin

10
11
12
13
14
15
16
17
18
19
20
21
22
23
24
25
26
27
28